

MINUTES
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, November 28, 2011, 6:00 PM

PLEDGE OF ALLEGIANCE – A moment of silence was held followed by the Pledge of Allegiance

MEMBERS PRESENT: Larry Willis, Chairman, Tina Baxter, Terry Dayvolt, Scott Dowers, Mike Winge and Judy Writsel.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

MEMBERS ABSENT: Don Mottley

MINUTES: To approve the Minutes of the last regular meeting held October 24, 2011. *Con't to end of meeting.*

The Chairman explained the Rules of Procedure to the audience and then added there is a problem with the recording device this evening and the minutes will have to be recorded by hand so if they go a little slower this evening please bear with them.

SPECIAL USES:

BZA-SU-11-19

APPLICANT: Lamar Outdoor Advertising by S. Carter Clarke, VPGM

OWNER: Marcus O. and Janice E. Miller

PREMISES: Property located on the S side of SR 66 approximately 0 feet E of the intersection formed by SR 66 and Triple Crown Dr. Lt. 79 in Triple Crown Estates Subdivision. Ohio Twp. 8711 SR 66.

NATURE OF CASE: Applicant requests a Special Use (SU-8) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow an electronic message board on the west face only of an existing standard billboard in a "C-3" Highway Commercial Zoning District. *Advertised in the Boonville Standard September 15, 2011. Continued from September 26, 2011 and October 24, 2011, meetings.*

S. Carter Clarke was present.

The Chairman called for a staff report.

Mrs. Rector stated they do have all the return receipts from certified mail to the adjacent property owners. She said this is a Special Use request for a for an electronic message board on the west face

only on an existing standard billboard. She stated the sign height will actually be reduced in size with the elimination of the top sign, going from 56' to 49'. She added the subject property and properties to the east and west are zoned "C-1" Neighborhood Commercial Zoning District and are businesses. She stated the property to the South is zoned "R-3" Resort Zoning District and is single family homes and all being Triple Crown Estates Subdivision. She further added the property to the north (across SR 66) is zoned "C-4" General Commercial and is Bellmoore Landing Subdivision (Wal-Mart). Mrs. Rector stated there is no flood plain on the property and the existing entrance is off Ruffian Lane. She stated Richard Meyer with INDOT inspected the site and stated via email that he sees nothing that sticks out at this time that really concerns him and it is a legal conforming billboard... any final decision on our end will come when they file an INDOT application. She stated the applicant has answered the proposed use questions in the Board's packets and as previously stated, the Millers' have given Lamar Outdoor Advertising a power of attorney granting them the ability to sign the application and represent them at this meeting. She added this has been continued from the previous meetings in order for them to file for a rezoning petition. She said the property was rezoned by the County Commissioners today from "C-1" to "C-3" Highway Commercial with a Use and Development Commitment. She stated the Use and Development Commitment limits the use on the property to the existing real estate office and the billboard. She stated with the new zoning the sign is in compliance with the zoning ordinance and the application is in order.

S. Carter Clarke stated the staff reports pretty well sums it up. He stated they felt the best route was to rezone the property and have the Use and Development to protect the neighbors from all the other "C-3" uses and they now ask for this application to be approved.

Discussion was held on the design of the sign and how many faces would be taken down and how high it would be.

Ascertaining there was no further discussion and being no remonstrators present, the Chairman called for a motion.

Terry Dayvolt made a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required Building Permits being obtained.
2. Subject to any required permits from INDOT or any other State or Federal permits.
3. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
4. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
5. Subject to all public utility easements and facilities in place.
6. Subject to no use of the words, “stop”, “danger”, “look”, or any other word which would confuse traffic.
7. Subject to no rotating or revolving beams of light.

The motion was seconded by Scott Dowers and unanimously carried.

BZA-SU-11-28

APPLICANT: Acapulco Mexican Restaurant, by Melvin Ortezt, Owner **OWNER:** Ortezt Ayala, LLC by Melvin Ortezt, Owner

PREMISES: Property located on the N side of High Pointe Dr. approximately 100 feet E of the intersection formed by High Pointe Dr. and Bell Rd. Ohio Twp. Lt 40 in High Pointe Centre North Sec 2 Ph 2 Subdivision. *8480 High Pointe Dr.*

NATURE OF CASE: Applicant requests a Special Use (SU 25) from the Comprehensive Zoning Ordinance to allow outside entertainment on the restaurant patio in a “C-4” General Commercial Zoning District. *Advertised in the Boonville Standard November 17, 2011.*

Melvin Ortezt and Jim Morley, Jr. were present.

The Chairman called for a staff report.

Mrs. Rector stated they have all the return receipts from certified mail of notice of this meeting to the adjacent property owners. She said the applicants are requesting a Special Use SU 25 from the Comprehensive Zoning Ordinance to allow outside entertainment on the restaurant patio in a “C-4” zoning district. She said the restaurant was granted a Variance at the last meeting to expand the patio area and walkways by this Board and they were informed at that meeting that it was known that they were having outside entertainment and was made aware that they needed to file this application if they wanted to continue with the bands. She stated they came in the same week and filed their application to come into compliance. Mrs. Rector stated they have answered the questions on the Proposed Use Statement and the owner will have to explain to you the times of year, times of day, etc., when this will occur and the proposed activities. Mrs. Rector stated the property to the east, south and west is zoned “C-4” General Commercial being High Pointe Centre Sub and Bellmore Sub

(west) and the property to the north is zoned Agriculture with a residence. She said there is no flood plain on the property and there is an existing entrance off High Pointe Drive. She commented they will need to ask our attorney if they are thinking of any conditions that they may want to impose on this approval since this is the first one for outside entertainment they have heard. She said the application is in order.

Attorney Doll stated it is up to the Board if they want to limit the hours of operation but he should warn the applicant that even if they are granted this Special Use that if the music gets really loud some night at 3 am they can't say the Sheriff won't say it is a public nuisance.

Jim Morley Jr. said he would just like to say that Mr. Ortez was not aware he needed a Special Use to have outdoor music and as soon as he found out he filed for this application.

Terry Dayvolt asked if they had any ideas or thoughts on the times he will operate.

Mr. Ortez stated they have music or karaoke and they generally operate between 6:00 pm to 9:00 pm but no later than 10:30 pm. He stated they have music Monday through Friday but mostly on Friday. He said they bring their own sound system and are asked not to play loud so the diners can still talk. He stated the kitchen closes at 10:30 pm.

Discussion ensued over hours of operation and if the Special Use ran with the land.

Attorney Doll advised it runs with the land.

Discussion ensued over the possibility of the property being sold and what other owners may do and that there are retirement communities in the area. It was also discussed what times they should terminate the music.

Mike Winge commented he has been to this restaurant and knows the music is not loud.

Mrs. Rector stated she has also.

Mr. Ortez stated they are very family oriented and they don't mind being restricted to hours the music could play.

It was discussed that if the music got loud the neighbors would call the police and complain.

Mr. Ortez stated he has had music several times before he knew he needed a Special Use and he never had any complaints.

Jim Morley Jr. suggested the Board limit the times of operation and the law enforcement handle anything bad.

Ascertaining there were no other comments from the Board and being no remonstrators present, the Chairman called for a motion.

Terry Dayvolt made a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
2. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
3. Subject to all public utility easements and facilities in place.
4. Subject to termination of music at 10:00 p.m. on Sunday through Thursday and at 11:00 p.m. on Friday and Saturday.

The motion was seconded by Mike Winge and unanimously carried.

MINUTES:

Mrs. Rector stated the Minutes have not been printed in the book yet because she wanted to be sure that everyone had the chance to read them. She added she received an emailed letter today from Mike and Lee Schiff asking the letter be made a part of the record. She stated in the letter some of their comments are confused with Ted Brown's approval.

Attorney Doll advised that it would not be appropriate to add the letter dated today into the record because it was not a part of the October meeting. He said this was not produced at that hearing nor

was it produced to the applicants. He said due process gives the applicants a chance to respond. He suggested the Board ask Mrs. Rector to respectfully decline the correspondence.

Mike Winge made a motion for Mrs. Rector to write a letter to Mr. and Mrs. Schiff respectfully declining their request. The motion was seconded by Judy Writsel and unanimously carried.

Larry Willis then called for a motion to approve the Minutes of the October 24, 2011 meeting.

Upon a motion made by Terry Dayvolt and seconded by Scott Dowers the Minutes of the last regular meeting held October 24, 2011 were approved as circulated.

ATTORNEY BUSINESS:

None

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Rector reminded the Board that there would not be a meeting in December due to no business being filed.

Judy Writsel and Scott Dowers stated they would probably not be on the Board next year and were thanked for their service from the towns.

Being no other business, the meeting adjourned at 6:50 p.m.

Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held November 28, 2011.

Sherri Rector, Executive Director